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AL-I**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548**FILE:** B-218442**DATE:** June 26, 1985**MATTER OF:** A.T.A. Training Aids U.S.A., Inc.**DIGEST:**

1. Protest based upon alleged improprieties in a request for technical proposals on the first step of a two-step, formally advertised procurement is untimely because it was filed after the closing date for receipt of technical proposals.
2. Protester's technical proposal on the first step of a two-step, formally advertised procurement was properly rejected without discussions where it took exceptions to essential and mandatory requirements outlined in the request for technical proposals, which could only apparently be met by significant modifications to the protester's offered system.

A.T.A. Training Aids U.S.A., Inc. (A.T.A.), protests the rejection of its technical proposal as unacceptable under request for technical proposals (RFTP) No. DABT60-85-R-0018 issued by the United States Army, TRADOC Contracting Activity-East, Fort Eustis, Virginia (Army). This two-step procurement is for a Location of Miss and Hit (LOMAH) system. LOMAH is an electronic system for use at a target range which records the location of each shot by a marksman and visually displays the shots on a cathode ray tube.

The protest is denied in part and the remainder dismissed.

The Army initiated step one on November 6, 1984. Step one entails the request for, and the submission and evaluation of, technical proposals, with discussions as necessary, but without any pricing, to determine the acceptability of the items offered. Step two is conducted as a formally advertised procurement, limited to those offerors whose step one proposals are found acceptable.

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The RFTP, at clause a.(3)(a), states that "technical proposals must clearly demonstrate on a point by point basis an understanding of, and ability to meet all requirements set forth in the specifications." Additionally, in accordance with the Federal Acquisition Regulation (FAR) 48 C.F.R. § 14.503-1(e)(2) (1984), the RFTP stated that any proposal which modifies, or fails to conform to the essential requirements or specifications of, the RFTP shall be considered nonresponsive and categorized as unacceptable.

Technical proposals were received until December 21, 1984. In evaluating A.T.A.'s technical proposal, the Army determined it to be unacceptable and not susceptible to being made acceptable in two essential areas and rejected it. Those requirements were contained in amendment 0002 to the RFTP at clauses C.1.2.c.1 and 2 and state that "the minimal acceptable requirements for computer programs" include the ability to:

"1. Detect, capture, store, display, and printout in sequence up to 50 rounds within a detection zone.

"2. Display/printout shall be adjustable up to the total detection area." (Emphasis supplied.)

A.T.A.'s proposal indicated that the system offered only had the capability of detecting, capturing, storing, displaying and printing out a maximum of 20 rounds per firing point in any one firing string. Also, A.T.A.'s offered display and printout is not adjustable.

A.T.A. primarily contends that the specification requirements for 50 round display and printout and adjustable display/printout "would lead to unnecessary cost while being unreasonable and unworkable." A.T.A. indicates that it first raised this issue with the contracting officer on March 8, 1985.

Section 21.2(a)(1) of our Bid Protest Regulations requires that protests based upon alleged improprieties in a request for (technical) proposals must be filed prior to the closing date for receipt of proposals in order to be considered on the merits. 4 C.F.R. § 21.2(a)(1) (1985). Since technical proposals were due on December 21, 1984, and A.T.A. did not protest the specifications until March 8, 1985, this issue was untimely filed. RMS Technology, Inc., B-215242, Dec. 17, 1984, 84-2 C.P.D. ¶ 671. Consequently, this protest basis is dismissed.

A.T.A. further argues that instead of rejecting A.T.A.'s proposal for its failure to meet the two requirements outlined above, the Army should first have requested "clarification" from A.T.A. In this regard, only one contractor was found to be technically acceptable under the RFTP, and A.T.A. contends that the primary purpose of the bid process (competitive pricing) therefore has been eliminated.

We have consistently recognized that the first step of a two-step, formally advertised procurement, in furtherance of the goal of maximized competition, contemplates the qualification of as many proposals as possible through discussions and that an agency should make any reasonable effort to bring step one proposals to an acceptable status. Angstrom, Inc., 59 Comp. Gen. 588 (1980), 80-2 C.P.D. ¶ 20; Guardian Electric Manufacturing Company, 58 Comp. Gen. 119, 125 (1978), 78-2 C.P.D. ¶ 376. However, an agency should not permit an offeror to remedy major proposal defects, including failure to comply with material requirements, when such defects could only be cured through extensive revision. Radiation Systems, Inc., B-211732, Oct. 11, 1983, 83-2 C.P.D. ¶ 434. Questions of whether first step technical proposals are unacceptable or whether they are susceptible to being made acceptable are basically matters requiring the judgment and expertise of technically qualified agency personnel. We will not question such judgments unless it is clearly shown that the agency action was unreasonable, arbitrary or a violation of procurement law. METIS Corporation, 54 Comp. Gen. 612 (1975), 75-1 C.P.D. ¶ 44.

The RFTP made it clear that the two requirements concerned were essential and mandatory and that failure to meet them would require rejection of a proposal. A.T.A.'s technical proposal unequivocally took exception to these requirements. Also, the protester does not indicate that it would or could change its system to meet these requirements and it would appear that significant modifications would have to be made to A.T.A.'s system to achieve compliance. The purpose for the discussions, which the protester alleges were required, was evidently for the protester to persuade the agency to change its mind about these requirements and waive them. Under the circumstances, since extensive revisions apparently would have to be made in the A.T.A. proposal to make it acceptable, we find reasonable the agency's rejection of A.T.A.'s proposal as unacceptable.

A.T.A. also alleges that its proposal was possibly rejected because of "A.T.A.'s previous contacts or demonstrations of the LOMAH system and discussions with the proponent agency." A.T.A. further contends that the contracting officer admitted to A.T.A. that its proposal was reviewed with tighter restrictions than other proposals. However, the record does not reflect that A.T.A.'s proposal was more strictly reviewed than other proposals. Moreover, to the extent that A.T.A. is alleging bad faith or bias on the part of contracting officials, it has not met its burden of proof, since the allegation is entirely unsupported by evidence in the written record. Janel, Inc., B-214036.2, May 22, 1984, 84-1 C.P.D. ¶ 547.

The protest is denied in part and the remainder dismissed.

We note, however, that the Army has found only one offeror acceptable. Consequently, since there is not adequate competition, we recommend that the Army cancel the second step and consider negotiating with the only acceptable offeror under step one to preclude the possibility of an award at an unreasonable price. See Exide Power Systems Division, ESB Inc., 57 Comp. Gen. 653 (1978), 78-2 C.P.D. ¶ 106.

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